

WebMemo



Published by The Heritage Foundation

No. 3017
September 20, 2010

The Burden Is on the Full Senate to Provide Due Diligence Regarding New START

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On September 16, 2010, the Senate Committee on Foreign Relations voted to report New START, a strategic nuclear arms control treaty with Russia, to the full Senate for consideration. Accompanying the treaty is a draft resolution of ratification penned by the committee. In taking this action, the Senate Foreign Relations Committee has failed to provide due diligence in exercising its portion of the advice and consent responsibilities the U.S. Constitution grants to the Senate in the making of treaties. The Founding Fathers set a high procedural bar for ratification and entry into force of treaties, expecting that the Senate would serve as a quality control mechanism in the treaty-making process.

There are two reasons why the Senate Foreign Relations Committee's forwarding of New START to the Senate was ill-advised. First, the committee did not have the knowledge necessary to make an informed judgment regarding the full ramifications of the treaty for U.S. national security. This lack of knowledge is the direct result of the Obama Administration's refusal to provide Senators with access to the treaty's negotiating record.¹ Second, the committee's resolution of ratification identifies a number of significant flaws in, or associated with, New START. Rather than insisting on fully and reliably redressing these flaws, the committee chose to apply partial solutions that are also unreliable in terms of their effectiveness.²

A Less Than Fully Informed Action. New START contains numerous provisions that are either unwise or ambiguous. Further, the treaty serves to compound the dangers to U.S. security posed by the

Obama Administration's existing national security and arms control policies. In both cases, the Senate is compelled to seek remedies to the flaws in, or stemming from, the treaty.

At least to some degree, the Senate Foreign Relations Committee has come to recognize that the treaty contains important flaws. These flaws include an insufficient commitment to defending the U.S. and its allies against strategic attack, limits on U.S. missile defense options, the application of treaty limits to conventional U.S. weapons, and weak policy for insisting on Russian compliance, just to name a few.

Fixing these flaws requires understanding two important issues: (1) how the problematic provisions within New START were allowed into the treaty in the first place; and (2) the linkages between the treaty itself and the broader strategic policies of the signatories. For example, it is quite clear that the U.S. and Russia do not agree on the advancement of the U.S. missile defense program. This necessarily raises the question of why the Obama Administration accepted limitations on the missile defense options of the U.S.—despite the fact that these limitations appear to be contrary to the White House's own declared policy and its assertions regarding the

This paper, in its entirety, can be found at:
<http://report.heritage.org/wm3017>

Produced by the Douglas and Sarah Allison
Center for Foreign Policy Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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meaning of these provisions within the treaty. Similar unanswered questions arise regarding other flaws, as well.

Thus, the level of knowledge necessary to draft amendments either to the text of New START or the resolution of ratification is available to Senators only through the negotiating record—to which they do not currently have access. The Senate Foreign Relations Committee chose to make no recommendations to the full Senate regarding amendments to the text of the treaty. On the other hand, it chose to adopt specific provisions regarding several of these flaws in its resolution of ratification. In either case, it could not act on the basis of adequate knowledge.

Insufficient Remedies. The Senate Foreign Relations Committee has attempted to remedy the flaws of New START through specific provisions in its recommended resolution of ratification. The vast majority of these provisions are partial and unreliable remedies.

For example, the committee attempted to remedy the Obama Administration failure to sufficiently commit to maintaining a safe, secure, and militarily effective strategic nuclear arsenal or a responsive nuclear weapons infrastructure to bolster the arsenal. The Senate Foreign Relations Committee's remedy in this area, at least as described at the time of the mark-up, is a deal with the Obama Administration regarding the arsenal and the infrastructure in exchange for the consent to the ratification of New START. Such a deal is necessary only on the basis that, if left to its own devices, the Obama Administration will not support nuclear modernization—a fact that further demonstrates the inadequacy of this approach.

Therefore, the recommendation is only partial because the Obama Administration can and will walk away from any commitments it makes regarding nuclear modernization after New START is ratified and enters into force. Further, Congress will be

under no obligation to fund any of these nuclear modernization programs in the future.

Also, the remedy proposed by the Senate Foreign Relations Committee to address the flaw of an insufficient commitment to nuclear modernization is less than reliable. First, this condition is expressed only as a “sense of the Senate” in its initial paragraphs. Second, the condition requires a judgment about when a circumstance may arise where resources are insufficient to meet the requirements for nuclear modernization, but fails to identify who will make that judgment. Nevertheless, the condition implies that the President, and the President alone, will make that judgment because the condition leaves it up to the President to provide a follow-up report describing the shortfall and its implications for U.S. nuclear forces.

As with the problem stemming from the Senate Foreign Relations Committee's lack of information regarding New START, the problem of its insufficient and unreliable remedies cuts across most of the flaws in, or associated with, New START. Insufficient remedies are a problem that can be found in the committee's suggested provisions for flaws related to conventional Prompt Global Strike, enforcement policy, asymmetrical reductions, and possible future actions by the treaty's implementing body, among others.

Quality Control: Steps for the U.S. Senate. The Senate Foreign Relations Committee has effectively left it to the Senate as a whole to serve as the quality-control mechanism envisioned by the Founding Fathers. The full Senate should respond accordingly. First, the Senate should make it clear that it will not be rushed into debating New START. At a minimum, this means not taking up the treaty until after the Obama Administration has provided Senators and appropriate staff with access to the negotiating record and they have been given the time to review that record in detail. Second, the Senate

1. Steven Groves, “President Obama Should Give the Senate Access to the Negotiating History of New START,” Heritage Foundation *Background* No. 2429, June 24, 2010, at http://thf_media.s3.amazonaws.com/2010/pdf/bg2429.pdf (September 15, 2010).
2. Baker Spring, “Twelve Flaws of New START that Will Be Difficult to Fix,” Heritage Foundation *Background* No. 2455, September 16, 2010, at <http://www.heritage.org/Research/Reports/2010/09/Twelve-Flaws-of-New-START-That-Will-Be-Difficult-to-Fix>.

should make it clear that when the treaty comes before the Senate, the text of the treaty itself will be open to amendment and that Senators will be given sufficient time to draft such amendments. Finally, the Senate should permit its Members the time to draft amendments that are full and reliable remedies to all the serious flaws that are found in the text of New START or that exist in association with the treaty.

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